



**REQUEST FOR QUALIFICATIONS (RFQ)
For the Design and Fabrication of a Signature Artwork for the new
Berryessa BART Station**

<p>SUBMITTAL DEADLINE- JANUARY 23, 10 P.M. PST This is an online application process only and the deadline cannot be extended</p>

GENERAL INFORMATION

The City of San Jose's Public Art Program has been engaged by VTA BART (Bay Area Rapid Transit); the agency responsible for delivering the design, construction and maintenance of the BART Berryessa Extension; to contract with an artist for the design, fabrication, delivery and installation oversight of a signature artwork for the Berryessa BART Station.

Artists are asked to submit qualifications for the development of an artwork for this location. Finalist will be asked to travel to San Jose for interviews the week of either February 3 or 10 (TBD), 2014. See "Selection Process and Evaluation Criteria" below for more information.

Please note: City offices will be closed December 24, 2013 through January 1, 2014, as well as January 20, and there will be no one available to answer questions. CaFE offices will be closed December 24-25 and December 31-January 1, so plan accordingly in order to get your questions answered in a timely manner.

PROJECT DESCRIPTION

The Berryessa BART Station is one of two stations that are part of the 10-mile Berryessa Extension, the first phase of the 16-mile BART Silicon Valley extension of the regional BART system. The station is located between Berryessa and Mabury Roads, adjacent to the San Jose Flea Market in east San Jose. The station is positioned where the Penitencia and Coyote Creeks meet in eastern San Jose. Its architecture and landscaping reflect the environment, and features the natural habitat and San Jose's agricultural past. The station is directly adjacent to Penitencia Creek trail, part of San Jose's extensive trail system.

http://bit.ly/1kNdEkq &	http://bit.ly/ZN5w54
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In addition to the nature beauty of the area, Berryessa is a culturally rich community of San Jose. <http://bit.ly/15L65Cm>. The BART station is located adjacent to the San Jose Flea Market, a community institution since 1960. <http://www.sjfm.com>. Over time, the flea market land is slated for development into high-density mixed-use residential and commercial community.

The area has a rich history of Native American cultures. The valley was home to thriving communities before the Spanish exploration of the area began. During excavations for the Silicon Valley BART Extension, the Penitencia Creek Site was discovered. Studies of the site indicate it is approximately 500 years old and was occupied for about 50 years. Evidence of the community includes hearths, cooking features, caches of items, tools and human burials. Investigation of this archaeological site continues and a full report will be available when completed.

The station campus will include the station, an elevated track platform, parking structure, surface parking lot, bus transit zone, UPC Trail connector, and enhanced access for bicyclists and pedestrians. Buses will provide direct access to key regional locations including Downtown San Jose.

The selected artist will be expected to travel to San Jose prior to developing their concept for the project to meet with community and project stakeholders. City and VTA will collaborate with artist in the development and scheduling of these meetings so they coincide with the outreach and engagement goals of the project, and the concept and artistic interest of the artist.



Station/Campus Development Schedule

Design & bid: Thru February 2015

Construction: February 2015 – April 2016

Project Completion: April 2016

Public Art Design/Fabrication Schedule:

Note that specific dates are subject to change in response to dynamics of base building schedule and integration requirements of art proposal.

In order to coordinate with the base building design and construction schedule – significant design development of the artwork should be completed by June 2014. Please consider this timeframe when applying for this project.

• Contract Execution	February 2014
• Research/Outreach and Concept development	February – April 2014
• Schematic Design Proposal Submittal	June 2014
• Design Development Proposal Submittal	August 2014
• Construction Documents	Fall 2014
• Fabrication/Installation Completion	March 2016 or as determined with base building contractor and VTA

PROJECT BUDGET

The total art project budget is **\$380,000**.

- Artist Design Fee - \$60,000
Includes all expenses related to the research, design, and engineering of the artwork including, but not limited to: design time and expenses, transportation and accommodations for artist(s), consultants, engineering, stamped construction documentation, permits, and insurance.
- Fabrication, Delivery and Installation Oversight - \$320,000
Includes all expenses related to the fabrication, delivery to site and installation oversight of the artwork including, but not limited to: any required licenses or bonding, transportation and installation of materials, transportation and accommodations for artist(s), and all other project related expenses, including sales tax as required. A 10% contingency on the construction budget is designated for unforeseen conditions. Any remaining contingency will be retained by the artist.

It is intended that the base project General Contractor or one of its subcontractors will install the artwork. It is also intended that the cost for this installation will NOT be borne by the art budget, except for artist's time and expenses required for installation oversight.

The selected artist must provide proof of payment of City Business Tax prior to contract award.

ARTIST ELIGIBILITY

This opportunity is open to artists working or living in the United States. Artist must demonstrate experience developing and implementing projects into architectural environments with a budget greater than \$150,000.

Applicants must have all necessary documentation and permits to work in the United States at the time of submittal of qualifications.

The City and VTA will contract with the artist/team in a single (three-party) agreement. Final award shall be contingent upon selected artist accepting Terms and Conditions of the agreement in substantial conformity to the terms listed in the above referenced document. City and VTA reserve the right to accept an offer in full, or in part, or to reject all offers. Following the successful completion and acceptance of the artwork, title will transfer to VTA/BART.

SELECTION PROCESS AND EVALUATION CRITERIA

Artist selection will be a two-phase process:

Phase I – Short List

January 23, 2014 – RFQ Response Deadline

Qualifications, work samples, and statements of interest will be submitted through CaFÉ™ per instructions below. City staff will preview all submissions for completeness prior to Selection Committee review and may reject incomplete applications.

NOTE: Specific proposals are not requested and will not be reviewed at this time.

Week of January 27, 2014 – Qualification Review

Up to four artists will be selected by a Selection Committee. The Committee will include community stakeholders, VTA representatives, and visual arts professionals.

Phase II – Interviews

Week of February 3 or 10, 2014

Final interviews will be conducted in San Jose, California. Following interviews, one artist/team will be commissioned. The interview will be scheduled to accommodate the selected finalists if possible, but final date selection will be at the discretion of the City. Flights and per diem will be reimbursed by City allowable rates. If necessary, accommodations will be made for remote interview.

CRITERIA

- Aesthetic excellence of past projects; appropriateness of prior concepts as they relate to BART Berryessa Station/Extension project goals and setting
- Experience, success and/or interest in creating public artworks in collaboration with stakeholder group including public outreach, in determining scope and development of artwork
- Experience developing artworks in outdoor environments
- Experience in construction materials and methods appropriate to the scope of the project
- Successful development of a permanent artwork in a public setting with a value of greater than \$150,000

Please note that the open nature of the site and the complexity of the VTA/BART campus will likely lead to a design with low frequency and low cost maintenance. Artwork with electronic components may be possible, though artists should demonstrated capacity with a range of materials other than electronic solutions.

The VTA and the City of San Jose reserve the right in their sole discretion to reject any or all applications, proposals, applicants, or projects, and to modify or terminate the application process or the selection process for any reason and without prior notice. Applicant agrees that any and all materials submitted pursuant to this Request for Qualifications become the property of the City of San Jose and shall not be returned to Applicant. Notwithstanding the foregoing, Applicant shall retain all copyright in the work which may be held by Applicant.

APPLICATION REQUIREMENTS

APPLICATION DEADLINE

Submissions must be received as a complete application in CaFÉ™ no later than **10:00 p.m. PST on Thursday, January 23, 2014**. *Late and incomplete applications will not be accepted.*

APPLICATION PROCESS

All materials will be submitted online, via CaFÉ™ (www.callforentry.org) except as noted in Item 5 below. There is no application fee. To view the application, go to www.callforentry.org, register a username and password, navigate to “Apply to Calls”, and search the list for “VTA BART Berryessa Station”. **Assistance in using the CaFÉ™ system is available during regular business hours via e-mail at cafe@westaf.org.**

REQUIRED APPLICATION MATERIALS

The application submission must include the information and materials described below all of which are required to constitute a complete application.

1. Artist Statement of Interest (3000 character maximum): Submission shall include an *Artist Statement of Interest* that outlines a general interest in this opportunity.

As part of the Artist Statement of Interest, please answer the following questions:

- i. What perspective and/or experience do you bring to a project, particularly in regards to incorporating artwork as part of large-scale infrastructure or transit projects?
- ii. What is your experience in with design professionals, stakeholders and communities in the development of artwork?
- iii. What specifically interests you about the project?
- iv. Do you have specific interests as an artist that you feel align well with a project of this nature?

2. Resume (3000 character maximum): Include a current resume that outlines your professional accomplishments as an artist. If submitting as a team, do not exceed the 2500 character maximum.

3. Images of Past Work: Visual representations of past artwork that demonstrate your qualifications for this project. Submit up to a total of 8 images of completed projects. Proposal images from prior projects may be submitted, but should be clearly marked as proposals and cannot be more than 3 of the requested 8 images. *Proposals for this project will not be reviewed.* If submitting as a team – all team members must be represented in the visual submittals. Instructions on how to format images to CaFÉ™ specifications can be found on the CaFÉ™ website under [Media Prep](#).

4. Descriptions of Past Work: Include a list of the submitted images with descriptions that clearly explain both the projects and images. Please indicate title, date, location, dimensions, significant materials, and budget if a public commission. If you were the member of a team, indicate your role.

5. Review Exhibit A and Review, sign and submit Attachments 1-3.

These attachments must be signed, and either scanned as PDF and emailed to Jennifer.easton@sanjoseca.gov, or you may sign and mail to Jennifer Easton, Office of Cultural Affairs/City of San Jose/200 E. Santa Clara St., 14th Floor/San Jose, CA 95113. Mailed documents must be post marked by January 23, 2014.

FOR FURTHER INFORMATION: If you require more information, contact Jennifer Easton: Jennifer.easton@sanjoseca.gov. No phone calls please.

EXHIBIT [A]
FEDERAL REQUIREMENTS

1. **General.** In performance of its obligations pursuant to this Agreement, Contractor agrees to comply with all applicable provisions of federal, state, and local law, regulations, and Federal Transit Administration (hereinafter called FTA) directives. The terms of the most recent amendment to any federal, state or local law, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to this Agreement to the maximum extent feasible, unless FTA provides otherwise in writing.
2. **Interest of Members of or Delegates to the United States Congress.**
In accordance with 41 U.S.C. § 22, Contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of this Agreement or any benefit derived therefrom.
3. **No Federal Government Obligations to Third Parties.**
Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party subcontractor, or any other person not a party to this Agreement, the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party Agreement, the Federal Government continues to have no obligation or liabilities to any party, including the subrecipient and third party subcontractor.
4. **Exclusionary or Discriminatory Specifications.**
Apart from inconsistent requirements imposed by Federal statute or regulations, Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.
5. **Geographic Restrictions.**
Contractor shall not use state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA.
6. **False or Fraudulent Statements and Claims.**

Contractor acknowledges and agrees as follows:

- a. Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 *et seq.* and U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Accordingly, by signing this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the matters covered by this Agreement. In addition to other penalties that may be applicable, Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal

- b. Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

7. Debarment and Suspension.

- a. Contractor agrees to comply with the requirements of Executive Orders No. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.
- b. Unless otherwise permitted by FTA, Contractor shall not award any third party subagreement of any amount with a party included in the “U.S. General Services Administration’s (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs,” implementing Executive Orders No. 12549 and 12689, “Debarment and Suspension” and 49 CFR Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for Agreement award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.
- c. Before entering into any third party subcontract exceeding \$100,000, Contractor agrees to obtain a debarment and suspension certification from each third party subcontractor (at any tier) containing information about the debarment and suspension status of that third party subcontractor and its “principals,” as defined at 49 CFR § 29.105(p). Contractor also agrees to require each third party subcontractor to refrain from awarding any third party subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any third party subcontractor (at any tier) seeking an Agreement exceeding \$100,000. An example of the appropriate certification is contained in 49 CFR Part 29, Appendix B.
- d. Contractor shall provide FTA a copy of each conditioned debarment or suspension certification provided by a prospective third party contract at any tier. Until FTA approval is obtained, Contractor shall not award a third party subcontract with any party that has submitted a conditioned debarment or suspension certification.

8. Reporting, Record Retention and Access.

- a. Reports. At a minimum, Contractor agrees to provide to FTA those reports required by U.S. Department of Transportation’s grant management rules and any other reports the Federal Government may require.
- b. Record Retention. Contractor agrees that, during the term of this agreement and for three years after final payments are made and all other pending matters are closed, it will

maintain intact and readily accessible all data, documents, reports, records, agreements, and supporting materials relating to the Agreement as the Federal Government may require for this Agreement.

- c. Access to Records. Upon request, Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor pertaining to the Project. In accordance with 49 U.S.C. § 5325(a), Contractor agrees to require each third party subcontractor whose agreement award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party subcontract and to audit the books, records, and accounts involving third party subcontracts as they affect this Agreement.

9. Restrictions on Lobbying - Awards Exceeding \$100,000.

- a. This Agreement is subject to the requirements of Section 1352, Title 31, United States Code, and Regulations appearing at 49 CFR, Part 20, Lobbying Disclosures Act of 1975. Contractor shall execute the “**Certification Regarding Lobbying**” set out in Attachment [1] to those Regulations and shall require that such certification be executed by its subcontractors or subsuppliers receiving an amount in excess of \$100,000 under this Agreement and shall forward such certifications and any disclosure forms to **VTA**.
- b. Contractor agrees as follows:
 - 1. Contractor will not use Federal assistance funds to support lobbying.
 - a. In accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, if a new subcontract exceeds \$100,000, FTA will not make any Federal assistance available until FTA has: (a) received the third party contractor or subcontractor’s certification that the third party contractor or subcontractor has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant, cooperative agreement, or any other Federal award from which funding for the Project is originally derived, consistent with 31 U.S.C. § 1352, and (b) if applicable, the third party contractor’s or subcontractor’s statement disclosing any lobbying with non-Federal funds that has taken place in connection with obtaining any Federal financing ultimately supporting the Contract.
 - b. Contractor will to provide FTA a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third party subcontractor at any tier.

10. Disadvantaged Business Enterprise.

- a. Policy. It is the policy of the Department of Transportation and **VTA** that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

It is further the policy of **VTA** to promote the development and to increase the participation of businesses owned and controlled by disadvantaged businesses. DBE involvement in all phases of Contractor procurement activities is encouraged.

- b. DBE Obligation. Contractor and its subcontractors shall ensure that disadvantaged business have the maximum opportunity to participate in the performance of this Agreement and subcontracts issued hereunder. In that regard, all contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform agreements.
- c. Failure to Carry Out Requirements. Failure to carry out the requirements of 49 CFR Part 26 may, after notification of Department of Transportation, result in the termination of this Agreement or other remedy as appropriate.

11. Civil Rights.

- a. Prohibitions Against Discrimination in Federal Programs. Contractor agrees to comply with, and assure compliance by its third party subcontractors at any tier under this Agreement, with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; 49 U.S.C. § 5332; and DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, and any implementing requirements FTA may issue.
- b. Equal Employment Opportunity. Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor also agrees to comply with any implementing requirements FTA may issue.
- c. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

12. Covenant Against Contingent Fees.

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, **VTa** may terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

13. Covenant Against Gratuities.

Contractor warrants that it has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of **VTa** to secure favorable treatment in the awarding, amending or evaluation performance of this Agreement.

14. Subcontracts.

Contractor shall include all provisions of this exhibit modified only to show the particular contractual relationship, in all its agreements connected with carrying out this Agreement, except agreements for standard commercial supplies.

15. Incorporation of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by Department of Transportation, whether or not expressly set forth in the preceding agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything relating to this Agreement herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of **VTa**'s requests which would cause **VTa** to be in violation of the FTA terms and conditions.

16. Non-Construction Employee Protection.

Contractor agrees to comply with any applicable employee protection requirements for nonconstruction employees of Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 327 through 332, and US DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. Contractor shall execute the "Certificate of Non-Construction Employee Protection" attached hereto.

17. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the

between VTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

18. Breaches and Dispute Resolution

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. Seismic Safety Requirements (*A&E New Buildings & Additions*)

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings. The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

20. Energy Conservation Requirements

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

21. Clean Air Requirements – Awards exceeding \$100,000

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

22. Clean Water Requirements – Awards exceeding \$100,000

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000. The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. The

Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

23. Americans with Disabilities Act (ADA).

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

24. Buy America - Awards Exceeding \$100,000.

Contractor agrees to comply with 49 U.S.C. § 5323 (j), FTA's Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by FTA, with respect to each third party subcontract financed by this contract.

When identified as a requirement in the proposal, Contractor must include the attached Buy America Certification (Exhibit []) with proposal on FTA funded contracts, except those subject to a general waiver.

ATTACHMENT [1]
CERTIFICATION REGARDING LOBBYING

Proposer hereby certifies as follows:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Bidder, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid for will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Bidder shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Proposer: _____

By _____

Title _____

Date _____

ATTACHMENT [2]
CERTIFICATION OF NONCONSTRUCTION EMPLOYEE PROTECTION

Proposer hereby certifies as follows:

1. If awarded a contract pursuant to this Request for Proposals, Proposer agrees to comply, and assures the compliance by any subcontractors, with any applicable employee protection requirements for nonconstruction employees of Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 327 through 332, and US DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.
2. Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contacts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Proposer: _____

By _____

Title _____

Date _____

ATTACHMENT [3]
BUY AMERICA CERTIFICATION
(Manufactured Products)

Certificate of Compliance with Section 165 (a)

The bidder hereby certifies that it will comply with the requirements of section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate for Non-Compliance with Section 165 (a)

The bidder hereby certifies that it cannot comply with the requirements of section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

ATTACHMENT F
DEBARMENT AND SUSPENSION CERTIFICATION
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The proposer, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining proposer responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

Signature of Authorized Representative

Name and Title of Authorized Representative

Date